



Embedding sustainable development across Government

Consultation response to the Environmental Audit Committee on behalf of the UK Environmental Law Association (UKELA)

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Planning and Sustainable Development working party.

UKELA's current priorities include:

- Informing and actively influencing the broad law and policy debate on climate change including the measures to reduce greenhouse gas emissions and manage their impacts at the international, EU and domestic level
- Helping deliver more effective and efficient environmental regulation including enforcement at the EU and UK level, not lower standards nor less regulation unless the same or better outcomes will be achieved

UKELA works on a UK basis and seeks to ensure that best legislation and practice are achieved across the devolved jurisdictions.

Summary

- The Sustainable Development Commission has been a key driver in moving the UK onto a more sustainable path. While some of its work can and must be embedded within government itself, there are many aspects of its work that cannot. The withdrawal of its



funding is almost certain to hinder the Government's efforts to become 'the greenest government ever'.

- Despite government commitments to sustainable development and the good work of the SDC, the UK remains far from a sustainable development path. Carbon dioxide emissions are not reducing quickly enough to avoid catastrophic warming, priority habitats and protected sites remain under threat, biodiversity continues to decline and water use remains above what can be sustained in the long term.
- Sustainable development takes its meaning from ecological sustainability. Economy and society cannot exist without the planet's ecological base and systems being maintained at an optimal level. The natural environment can exist without economy and society. This is not to say that economic and social considerations do not matter, but rather that economy and society need to operate within the confines of what the natural environment can support – environmental limits. An effective government approach to sustainable development must start with a high-level, consistent defining of sustainable development in this way.
- An effective sustainable development approach equally requires reorienting all government policies and activities to ensure that they respect ecological systems, environmental limits and the needs of future generations. A procedure to assess policies and legislation in terms of anticipated environmental impact prior to adoption must be introduced.
- A high-level commitment across the whole of government is imperative, driven from the top by a new sustainable development unit, both vertically and horizontally, across all departments and at every level.

Key recommendations:

- Sustainable development needs to be clearly defined in ecological sustainability terms in UK government policy and law (as appropriate), and be established as an overarching objective of the UK government.
- A high-level sustainable development unit should be established, reporting directly to the Cabinet and composed of senior members of the SDC, to guide, monitor and advise the government on how to embed sustainable development fully in its work.
- The auditing functions of the SDC should be transferred to the EAC, with a transfer of some staff members to resource this.
- A member of the Cabinet should be given specific responsibility for driving sustainable development across government and leading Cabinet discussions on this.



- Introducing a sustainability impact assessment procedure to ensure that all laws and policies are checked for their coherence with the requirements of ecological sustainability.

Embedding sustainable development within Government

1. Having a clear aim: Defining sustainable development across Government

1.1 Sustainable development is a term that has been widely distanced from its original context. As noted by Judge Weeramantry, formerly of the International Court of Justice, integrating human activities with the natural environment in a way that respects the latter's capacity and functionality has been part of the tradition of humankind for centuries.¹ This is the true meaning of sustainability. It is ecological in its foundation and at its core. Sustainable development therefore, is only meaningful if it is taken to mean societal progress which accords with ecological sustainability.

1.2 The UK Government's current definitional approach to sustainable development is ambiguous. On the one hand, the 2005 UK Sustainable Development Strategy acknowledges that 'The past 20 years have seen a growing realisation that the current model of development is unsustainable.'² On the other hand, the policies and actions listed to achieve this are not designed to shift the UK onto a different development pathway – merely to make some important, but ultimately inadequate, adjustments to the status quo. An example is the sustainable production and consumption approach – 'doing more with less' – which is about reducing the environmental impact of increased economic growth ('decoupling'), not with reducing our current share of the earth's natural resources, as sustainability requires. The first step is thus to adopt a clear, explicit definition of what sustainable development is – societal progress which upholds ecological limits, natural systems and the needs of future generations.

1.3 The practical implications of such a definition must furthermore be delineated in order to make sustainable development operational – rather than reducing sustainable development to a simultaneous integration of environmental, economic and social objectives, the fundamental need to preserve the ecological base on which economy and society depend requires a rather different formulation. Thus, while integration should be pursued as far as possible, where a law,

¹ See the Judgment in the *Gabcikovo-Nagymaros* case (ICJ, 1998), Separate Opinion of Judge Weeramantry.

² 'Securing the Future', the UK Sustainable Development Strategy 2005, p.12.



policy or action has a high chance of causing environmental degradation and/or creating or exacerbating unsustainable ecological trends, it should be deemed incompatible with the Government's sustainable development commitment and thus modified or abandoned. Such an operational approach to sustainable development is the only way to ensure it is achieved.

2. Making sustainable development the overarching objective

Sustainable development is about everything that the government does. It needs to embody *the* approach, not just form one part of an approach. Following the example of the European Union³, the Government should make sustainable development the overarching paradigm and objective for all government policy, legislation and action. It must be embedded as the central principle from which all political and legislative activities flow.

3. Driving sustainable development from the top

The withdrawal of funding from the SDC is a major blow to the government's sustainable development commitment. It is imperative that responsibility for sustainable development is placed at the very top of government. Specific recommendations include:

- At Cabinet level, a Minister should be assigned an explicit and enhanced mandate for driving forwards sustainable development across government, and coordinating Cabinet discussions on this.
- Full reporting to Parliament on sustainable development progress must take place on an annual basis on the basis of clear indicators which themselves are reviewed annually.
- While it is in some senses logical that the primary responsibility for sustainable development lies with DEFRA, there is a danger of confining sustainable development to that department rather than embedding it as part of the culture of every department. One way to avoid this would be to create a high-level sustainable development unit, sitting underneath and reporting directly to the Cabinet, consisting of a small number of top members of the SDC in senior civil service roles. This would be an effective way of a) ensuring that the Government receives the expert advice it needs on sustainable development, b) that legislative and policy proposals can receive an expert appraisal prior

³ The EU has had a sustainable development in the Treaties since the Treaty of Amsterdam in 1997. However, the Lisbon Treaty has made this even more explicit by stating that the EU will 'work for the sustainable development of Europe'. Sustainable development is consistently referred to in EU policy and strategy documents as an overarching objective of the Union.



to being approved/taken to Parliament, and c) that sustainable development is accorded the priority and high-level consideration that it demands. It would also be an effective means of retaining some of the expertise of the SDC within government, creating continuity and ensuring that its valuable work does not get lost. This high-level sustainable development unit could also be charged with developing and reviewing the sustainable development indicators used for reporting to Parliament and stakeholders. In this way, it would mirror the approach taken by the EU, where sustainable development is coordinated by the Secretary General's office which reports directly to President Barroso.

4. Ensuring all legislation, policies and actions are compatible with sustainable development

Embedding sustainable development across government also requires that a procedure is developed to ensure that all new legislation, policies and actions are in accordance with this principle. Here, the EU's Impact Assessment procedure provides a model – through this, all departments would have to submit new policy proposals for an assessment of their environmental, social and economic implications. Such a mechanism would be a means to ensure that any proposal which looked likely to cause environmental degradation and/or create or exacerbate unsustainable pressures on the natural environment would be sent back for amendment.

5. Participation and monitoring

- 5.1 Responsibility for auditing and monitoring the Government's sustainable development approach should be allocated to the Environmental Audit Committee, boosted by a team of auditors from the SDC who should be transferred to the Committee for this purpose. The EAC would thus work in close collaboration with the new high-level sustainable development unit reporting to the Cabinet.
- 5.2 Stakeholder participation is integral to effective implementation of sustainable development. The Government should establish a sustainable development stakeholder forum of public, private and NGO representatives to meet bi-annually and feed into and comment on the Government's sustainable development approach.

6. From top to bottom

Sustainable development implementation requires the commitment to run from the very top to the very bottom. Awareness is crucial, and with sustainable development often shrouded in confusion,



one simple but effective way to achieve this would be to provide sustainable development training for all new civil service staff – to explain the nature of the Government's commitment, how it relates to their department and to their work.

7. Acting for the long term

Sustainable development is not something that can be postponed for the future. Our future depends on sufficient action being taken now. This means that the Government's sustainable development commitment must not waiver in the face of budgetary prudence or economic challenges. Long-term thinking and action must be sustained for the benefit of all.

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On behalf of the UKELA Planning and Sustainable Development Working Party

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